

EX PARTE OR LATE FILED

ORIGINAL

WILLKIE FARR & GALLAGHER

RECEIVED

AUG - 7 2003

Federal Communications Commission
Office of Secretary

JAMES L. CASSERLY

202 303 1119

jcasserly@willkie.com

1875 K Street, N.W.

Washington, DC 20006-1238

Tel. 202 303 1000

Fax 202 303 2000

August 7, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Ex Parte Notice

Re: Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120
(also CS Docket Nos. 00-96 and 00-2).

Dear Ms. Dortch:

On Wednesday, August 6, representatives of Comcast Corporation met with Johanna Mikes, Legal Advisor to Commissioner Adelstein, to discuss the above-captioned proceeding. Comcast was represented by James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, and the undersigned.

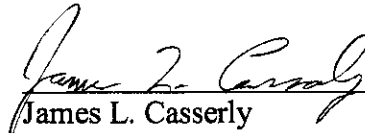
We stressed that the Commission's evaluation of broadcasters' demands for expanded must-carry rights must begin with an analysis of the applicable statute. Section 614(b)(3)(A) of the Communications Act entitles a broadcaster only to carriage of its "primary video . . . transmission," but the current proceeding is focusing on the extent to which broadcasters should have *additional* carriage rights -- either in the form of compulsory cable carriage of *both* analog and digital broadcast signals ("dual" must-carry) or compulsory cable carriage of *multiple* broadcast program streams ("multicast" must-carry). We further observed that the Commission's judgments should be informed not only by the statute's text, history, structure, and purpose but also by its duty to respect, and avoid conflicts with, cable operators' rights under the First and Fifth Amendments to the U.S. Constitution. (We also suggested that the statutory analysis take into account the Commission's experience with collocation and TELRIC, the former because judicial rulings have repeatedly constrained FCC efforts to allow one party to occupy another party's private property, even *with* compensation, and the latter because, in contrast to the pricing of unbundled network elements, must-carry allows a broadcaster to occupy the private property of a cable operator *without* compensation.) We highlighted ways in which the must-carry requirements now under consideration would differ from -- and therefore deserve much less judicial deference than -- the analog must-carry requirement (confined to a single "primary video . . . transmission") that won affirmance, by the narrowest possible margin, in the Supreme Court's *Turner II* decision. Finally, we discussed Comcast's progress in rolling out high-definition service in 21 major markets, its progress in accelerating system upgrades that will enable (among other things) the offering

Marlene H. Dortch
August 7, 2003
Page 2

of high-definition services in numerous additional markets, and Comcast's continuing progress in reaching voluntary HDTV carriage agreements with numerous local broadcasters, including more than 20 public broadcasting stations. We provided Ms. Mikes with copies of the reply comments Comcast filed in the dockets listed above on August 21, 2001, and the summary that was appended to our ex parte report of July 30, 2003.

This letter is filed pursuant to Section 1.1206(b)(2) of the Commission's rules. Please let me know if you have any questions.

Respectfully submitted,


James L. Casserly
Willkie Farr & Gallagher
1875 K Street, N.W.
Washington, DC 20006
(202) 303-1119

cc: Johanna Mikes